

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

May 3, 2022 at 1:30 p.m.

1.	18-25209 -C-13	ROMANA HERRERA	CONTINUED MOTION TO REFINANCE
	PGM -2	Peter Macaluso	3-1-22 [70]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 74.

The Motion to Refinance Debt is xxxxxx.

Romana Herrera, the debtor, filed this Motion seeking authority to refinance the mortgage on the property located at 5717 Nona Way, Sacramento, CA. Debtor proposes using the proceeds from the refinanced loan to payoff the plan at 100%.

The proposed financing is in the principal amount of \$234,025, paid at 3.875% interest over a 30 year term. Monthly payments are proposed to be \$1,545 for years 1 through 11, and \$1,393 for years 12 through 30.

The Chapter 13 trustee opposes the motion because the proceeds of \$15,000, which are indicated in the exhibits attached to the debtor's motion, is insufficient to pay the full amount of approximately \$55,800 that is needed to pay 100% to the general unsecured creditors.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Romana Herrera having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxx

May 3, 2022 at 1:30 p.m.

2. [21-23739](#)-C-13 ELIZABETH SCHOENGARTH
[RDG](#)-1 Pauldeep Bains

OBJECTION TO CLAIM OF DIAMOND
RESORTS HAWAII COLLECTION
DEVELOPMENT, LLC, CLAIM NUMBER
8
4-1-22 [[21](#)]

Thru #3

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 23.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 8-1, filed by Diamond Resorts Hawaii Collection Development LLC was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 7, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Proof of Claim subject to this Objection was filed January 15, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 8-1 of Diamond Resorts Hawaii Collection Development, LLC is sustained, and the claim is disallowed in its entirety.

3. [21-23739](#)-C-13 ELIZABETH SCHOENGARTH OBJECTION TO CLAIM OF DIAMOND
[RDG](#)-2 Pauldeep Bains RESORTS HAWAII COLLECTION
DEVELOPMENT, LLC, CLAIM NUMBER
9
4-1-22 [[18](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 20.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 9-2, filed by Diamond Resorts Hawaii Collection Development LLC was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 7, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Proof of Claim subject to this Objection was filed January 21, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 9-2 of Diamond Resorts Hawaii Collection Development, LLC is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 14.

The Motion to Extend the Automatic Stay is Granted.

Alsester A. Coleman ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on February 18, 2022, after Debtor failed to make all payments due under the confirmed plan. Order, Bankr. E.D. Cal. No. 21-21347, Dkt. 91. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed when the Social Security Administration froze his payments. The debtor represents that his social security payments are reinstated and he has made some progress repaying his property taxes. He further states that he has taken on no new debt since the prior case was dismissed.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second

case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Jose Luis Hernandez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5. [20-25052](#)-C-13 DAVID/KATIE GREENLY
[RDG](#)-1 Stephan Brown

OBJECTION TO CLAIM OF HSBC BANK
USA, N.A., CLAIM NUMBER 11
3-29-22 [[25](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 27.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 11-1, filed by HSBC Bank USA, N.A. was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 11, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 9. The Proof of Claim subject to this Objection was filed January 10, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 11-1 of HSBC Bank USA, N.A. is sustained, and the claim is disallowed in its entirety.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 35.

The Motion to Confirm is ~~xxxxxxx~~.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 28) filed on February 14, 2022.

At the prior hearing on April 5, 2022 the Trustee and the Debtor agreed to continue the motion in order to determine whether:

1. The plan still does not provide for the Internal Revenue Service's priority claim and even with the \$48 increase in the monthly payment the plan payments would have to increase by at least \$119 a month in months 5 through 60 in order to pay the secured and priority claims and a zero percent dividend to general unsecured creditors.

DISCUSSION

At the hearing, ~~xxxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Stacy Marie Herman, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxx~~

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 26.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors constitutes evidence of unreasonable delay that is prejudicial to creditors, which is cause for dismissal of the case. 11 U.S.C. § 1307(c)(1).

The Motion also argues debtor is \$120 delinquent in plan payments, which is supported by declaration. Dkt. 25.

The Motion further argues that the debtor has not provided all necessary tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That constitutes evidence of unreasonable delay that is prejudicial to creditors, which is cause for dismissal of the case. 11 U.S.C. § 1307(c)(1). The debtor has also not provided all necessary pay advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That constitutes evidence of unreasonable delay that is prejudicial to creditors, which is cause for dismissal of the case. 11 U.S.C. § 1307(c)(1).

Failure to maintain plan payments constitute evidence of unreasonable delay by the debtor that is prejudicial to creditors.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case
filed by the Chapter 13 Trustee, Russell
Greer, having been presented to the court, and
upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion, is in the best interest of creditors and the Estate.

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is ~~xxxxxxx~~

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. 341 meeting has not been conducted.
2. Debtor has not provided copies of his most recent tax returns or payment advices.
3. Plan is not feasible because it proposes paying the value of the collateral securing the claim of the County of Sacramento without an order on an appropriate motion to value collateral and the plan fails to state the monthly dividend on the claim.
4. Plan relies on a monthly contribution from his son but has not filed a declaration from his son stating his ability and willingness to assist the debtor.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on April 11, 2022. Dkt. 20. The debtor addressed the Trustee's opposition as follows:

1. Debtor attended the 341 meeting and believes he has satisfied the Trustee's issues.
2. Debtor filed a concurrent declaration stating that he has not filed tax returns in many years because he is disabled with limited income. He also states that he will provide pay advices to the Trustee.
4. The County has provided several lien releases and the debtor anticipates the County will file an amended claim in the amount of \$5,000, and so that a Motion to Value Collateral will not be needed.
5. His son has recently moved out of his house and no longer provides any financial contributions.

DISCUSSION

At the hearing XXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is XXXXXXXX

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice which is set on an order granting notice to fewer than 14 days notice. A review of the docket shows that an order was granted shortening the amount of notice to fewer than 14 days. Dkt. **Xx**.

The Motion to Extend the Automatic Stay is Granted.

Henry Reed ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on April 8, 2022, after Debtor was unable to confirm a plan after submitting multiple proposed plans. Order, Bankr. E.D. Cal. No. 21-22614, Dkt. 122. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he has again begun working as a truck driver, and the prior case required negotiations with a secured creditor and domestic support obligation creditors that should not delay confirmation of plan in this case.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*,

No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Henry Reed having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.